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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 BYRON CHAPMAN,

NO. CIV. S-04-1339 LKK/DAD

12 Plaintiff,

13 v.

O R D E R

14 PIER 1 IMPORTS, INC., et al

15 Defendants.

16 /
17 Plaintiff Byron Chapman ("Chapman") seeks leave to amend his
18 complaint for disability discrimination against the defendant Pier
19 1 Imports ("Pier 1"), following remand from the Ninth Circuit,
20 which vacated this court's summary judgment order and instructed
21 the court to dismiss Chapman's claim for lack of standing. The
22 court instructed plaintiff to seek clarification from the Ninth
23 Circuit as to the nature of its ruling, which the Circuit denied.
24 Nonetheless, it explained that this court may, in its discretion,
25 grant plaintiff leave to file an amended complaint. For the reasons
26 described below, the court grants plaintiff's motion to file an

1 amended complaint and to correct paragraph 12 of his proposed
2 amended complaint.

3 The court must admit that it was surprised that defendant
4 filed an opposition to plaintiff's motion in light of the Ninth
5 Circuit's order and this court's March 18, 2011 order. Most of
6 defendant's arguments are premature or procedural arguments, which
7 hardly justify delaying determination on the merits.

8 **A. Premature Arguments**

9 Many of defendant's concerns are appropriately raised under
10 Fed. R. Civ. P. 12 and not in opposition to a motion to file an
11 amended complaint. This is of particular importance given that the
12 Ninth Circuit reviews this court's application of Rules 12(b) (1)
13 and 12(b) (6) *de novo*, but reviews its decision to allow or disallow
14 an amended complaint for abuse of discretion. These issues are the
15 following: (1) whether plaintiff has pled sufficient facts to
16 demonstrate standing and (2) whether plaintiff has stated a claim
17 upon which relief may be granted.

18 Furthermore, defendant raises several concerns about the
19 sufficiency of the evidence. These concerns are appropriately
20 raised at summary judgment or trial. Additionally, defendant's
21 contention that plaintiff's claims do not relate back to the
22 original filing date are also evidentiary questions concerning the
23 scope of any potential liability. Federal Rule of Civil Procedure
24 15(c) does not prohibit a court from allowing an amended complaint
25 where such claims may not relate back, but rather describes the
26 test to apply when determining whether a claim relates back.

1 Defendant's concerns here are best addressed in a motion for
2 summary judgment or a trial on how to apply the statute of
3 limitations to the instant case.

4 **B. Technical Procedural Arguments**

5 Defendant also raises several objections to plaintiff's
6 proposed amended complaint that appear to be distractions from the
7 actual issues in this case. First, they contend that plaintiff
8 failed to follow local rules requiring him to attach a proposed
9 amended complaint to the instant motion. Plaintiff, however, had
10 already filed his proposed amended complaint. The proposed filing
11 was already on the record and, thus, there is no reason to find
12 that plaintiff failed to comply with local rules.

13 Further, defendant contends that the court should deny
14 plaintiff's motion because the 2007 settlement agreement and some
15 of the allegations in plaintiff's proposed amended complaint
16 occurred after the filing of the original complaint and, thus,
17 plaintiff should have moved to file a supplemental complaint under
18 Fed. R. Civ. P. 15(d) and not an amended complaint under Rule
19 15(a). This distinction is without merit. As the Ninth Circuit has
20 held, "[T]he erroneous characterization of [a] corrected pleading
21 as a 'second amended complaint' as opposed to a supplemental
22 pleading is immaterial." Cabrerea v. City of Huntington Park, 159
23 F.3d 374, 382 (9th Cir. 1998). The Circuit has consistently
24 reasoned that, "This interpretation of Rule 15(d) is supported by
25 the general purpose of the Rules to minimize technical obstacles
26 to a determination of [a] controversy on its merits." Id. (quoting

1 United States v. Reiten, 313 F.2d 673, 674 (9th Cir. 1963)). In
2 light of this precedent, the court construes plaintiff's motion as
3 under Rules 15(a) and 15(d).

4 **C. Undue Delay**

5 Defendant further contends that the court should deny
6 plaintiff's motion because of undue delay. Specifically, it argues
7 that granting plaintiff leave to amend would be an abuse of
8 discretion because of precedent that a district court did not abuse
9 its discretion in denying leave to file an amended complaint where
10 plaintiff did not demonstrate good cause. This argument is entirely
11 without merit. Initially, this case has been on appeal since 2007
12 making defendant's contention of undue delay quite odd to say the
13 least. Moreover, an en banc panel of the Ninth Circuit ordered that
14 it did not limit the district court's discretion to grant leave to
15 amend. Under these circumstances, the court does not find that the
16 delay in filing the proposed amended complaint was undue.

17 **D. Alternate Paragraph**

18 Plaintiff requests that this court allow him to correct
19 paragraph 12 in his proposed amended complaint when filing his
20 amended complaint. The court grants this request.

21 **E. Conclusion**

22 For the foregoing reasons, the court GRANTS plaintiff's motion
23 to file an amended complaint with the correction to paragraph 12
24 explained in plaintiff's briefs. Plaintiff shall file his amended
25 complaint within seven (7) days of the issuance of this order. The
26 court further sets a status conference for July 11, 2011 at 3:00

1 p.m. The parties shall file status reports fourteen (14) days
2 before the status conference.

3 IT IS SO ORDERED.

4 DATED: June 16, 2011.

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7 LAWRENCE K. KARLTON
8 SENIOR JUDGE
UNITED STATES DISTRICT COURT
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